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Semayne's Case: liberty of the house

Semayne's Case, an opinion of the English King's Bench in 1604, is a very important case expressing the long-standing "knock and announce" rule when law enforcement searches a residence. This rule was formally recognized to be an important part of the U.S. Fourth Amendment in *Wilson v. Arkansas* (U.S. 1995). I've posted the entire opinion online and linked to it below. *Semayne's Case* is where the popular phrase "a man's home is his castle" comes from, but there's a lot more to it than that.

I was going to write a blog post about the interesting conflict that is going to arise between no-knock searches (which, despite *Wilson,* are increasingly being conducted by increasingly militant and culturally distant law enforcement) and the recent "stand your ground" statutes in at least ten U.S. states and at least one European jurisdiction. Several other American and European states are discussing such legislation. These statutes generally provide a full defense to murder if the victim is an illegal entrant into an occupied residence (or even in some states an occupied car), or in some states if the occupant reasonably believes that deadly force is necessary to prevent the commission of a forcible felony within the house, including common burglary.

It turns out I don't need to say much, because Sir Edward Coke has already done it for me in *Semayne's Case.* The special expectation of safety within and right to defend a residence and its occupants -- what Coke called the "liberty ... of a house" -- justifies both a kill-the-burglar rule for residents and a knock-and-announce rule for law enforcement.

So forget the exclusion of evidence in such a search (per *Hudson v. Michigan*) -- there is now in at least a few states a much stronger incentive for police to behave with respect for household safety and security. Police need to enter a house legally, including announcing themselves per *Semayne's Case* and *Wilson v. Arkansas,* or they are, I argue, legally and m.orally put in jeopardy of their lives in a "stand your ground" state.

It's important to observe that Coke speaks of the "liberty ... of a house" and the of thhue of whether the house is "a liberty." In Coke's time "liberty" was a synonym for a franchise -- a privately held jurisdiction. Indeed, the kill-the-burglar rule is a weaker version of *infangthief,* the franchise right to hang a thief caught red-handed on one's own land. *Infangthief* and other liberties were special property rights that had to be granted by one's lord and ultimately by the king, or alternatively by prescription (i.e. long-standing use that creates ownership under property law). Per Coke, liberty of the house automatically attaches to any occupied residence as an inalienable prescriptive right. It provides more protection against execution of process in a private lawsuit than against execution of process for for a criminal case (here referred to as process for the King). In either case, the official must knock and announce. The highly evolved procedural law of franchises is central to Coke's opinion. Coke analogizes the liberty of a house to a weak form of liberty where the king's writs run but where private officials execute them, i.e. a liberty "with return of writs." Coke notes that, while the

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owner of such a liberty (or an official of it, called here a bailiff) normally has authority to use force against trespassers, this does not give the liberty owner authority to use force against legally executed process where the liberty owner himself is a defendant: "a liberty is always for the benefit of a stranger to the action" not for the defendant. Thus, when process is performed legally against a resident, it can be executed forcefully into and within a residence despite liberty of the house which otherwise allows the resident a full lethal defense against forceful intrusion. To allow the resident to distinguish the two cases is one of the main reasons for the knock-and-announce rule.

Under some of the new "stand your ground" laws the modern equivalent of Coke's liberty of the house now attaches to your car as well, so that you can legally defend yourself against carjackers with deadly force.

My thanks to Professor Renee Lettow Lerner for her insights on stand-your-ground statutes and legal history generally.

Without further ado, *Semayne's Case.*

Posted by Nick Szabo at 9:48 PM

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